BLUMENFELD & COHEN
SUMNER SQUARE
1615 M STREET, N.W. SUITE 700
WASHINGTON, D. C. 20036
202 955-6300
FACSIMILE 202 955-6460
http://www.technologylaw.com

4 EMBARCADERO CENTER
SUITE 1170
SAN FRANCISCO, CA 94111
415 394-7500
FACSIMILE 415 394-7505

GLENN B. MANISHIN
glenn@technologylaw.com

November 16, 1998

Ms. Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: CC Docket No. 98-147
Notice of Ex Parte Presentation

Dear Ms. Salas:

Enclosed for filing are the materials presented by MachOne Communications, Inc. ("MachOne") in its recent meetings with Commission Staff in connection with the captioned docket. MachOne was represented by Michael Solomon, its CEO, Matthew Stepovich, Vice President, and the undersigned counsel. The Commission Staff present were Jonathan Askin, Jason Oxman and Dan Shiman of the Common Carrier Bureau, Stagg Newman of the Office of Engineering and Technology, and Johnson Garrett and Jennifer Fabian of the Office of Plans and Policy.

MachOne's views are reflected in its comments and reply comments in this proceeding. We also discussed the October 15, 1998 tentative decision by an Administrative Law Judge of the California Public Utilities Commission (a copy of which is enclosed) holding that shared access to loops for DSL services is affirmatively prohibited by the FCC's *Local Competition Order* and implementing rules, a decision MachOne believes is inconsistent with settled law and policy governing unbundling of loop access and loop capabilities.

Please do not hesitate to contact the undersigned should you have any questions in this regard.

Sincerely,

Glenn B. Manishin

Enclosure
GBM:hs

MACH ONE COMMUNICATIONS

Presentation to the

Federal Communication Commission

November 4, 1998

MACH ONE COMMUNICATIONS

The Economics of Line Sharing

- What we will cover
  - Who we are
  - Description of our business
  - Our offering to consumers
  - How line-sharing effects our business
- What we will not cover
  - Technical feasibility of various xDSL technologies

MACH ONE COMMUNICATIONS

Who we are

- A venture capital backed company
- Successful and experienced entrepreneurs
  - Peter Olson
  - Michael Solomon
  - Thomas Obenhuber
  - Kevin Grundy

MACH ONE COMMUNICATIONS

Our Business

- **Low cost provisioning, deployment, operations, and support of high speed Internet access, and other advanced digital services using DSL.**

MACH ONE COMMUNICATIONS

Our Market

- **Residential and small business customers**
- **Potentially insatiable demand for our service**
- **It is just like the Personal Computer market in 1982**
- **U.S. Internet Population - 70 million**
  Source: Nielsen/CommerceNet
- **High demand for increased bandwidth - 66% want faster access** *Source: Yankee Group*

MACH ONE COMMUNICATIONS

How Internet access is purchased today

- Purchase a modem- retail, mail-order, online
- Choose a service
- Self-install
- Go online

- ***No change in telephone service***
- ***No truck or technician to the house***

MACH ONE COMMUNICATIONS

Current Market Inhibitors

- **High cost**
- **Limited service availability**
- **Complex provisioning and deployment**
- **Complex, inconvenient installation**

MACH ONE COMMUNICATIONS

Current market inhibitors

- Qualification of service availability
  - DSL line testing, Cable plant internet deployment
- Installation of Access Connection
  - Cable and DSL - external wiring, DirectTV - Satellite dish and return dial connection
- In-House Wiring
  - New dry copper phone lines and TV Cable are not in the right room
- Upgrading/Replacing PC
  - Ethernet Card, with complex configuring is required

MACH ONE COMMUNICATIONS

High Cost

Service Pricing

Service	Data Rate	Monthly Charges
Dial-up	14.4/56kb	$0 /21.95
Cable	1.5/3mbps	$40/60
ISDN	128kb	$60/200
ILEC ADSL	128kb/1.5mb	$75/100
CLEC SDSL	384kb	$200/400
Frame Relay		$1000
T1		$2000

MACHONE COMMUNICATIONS

MachOne Solution

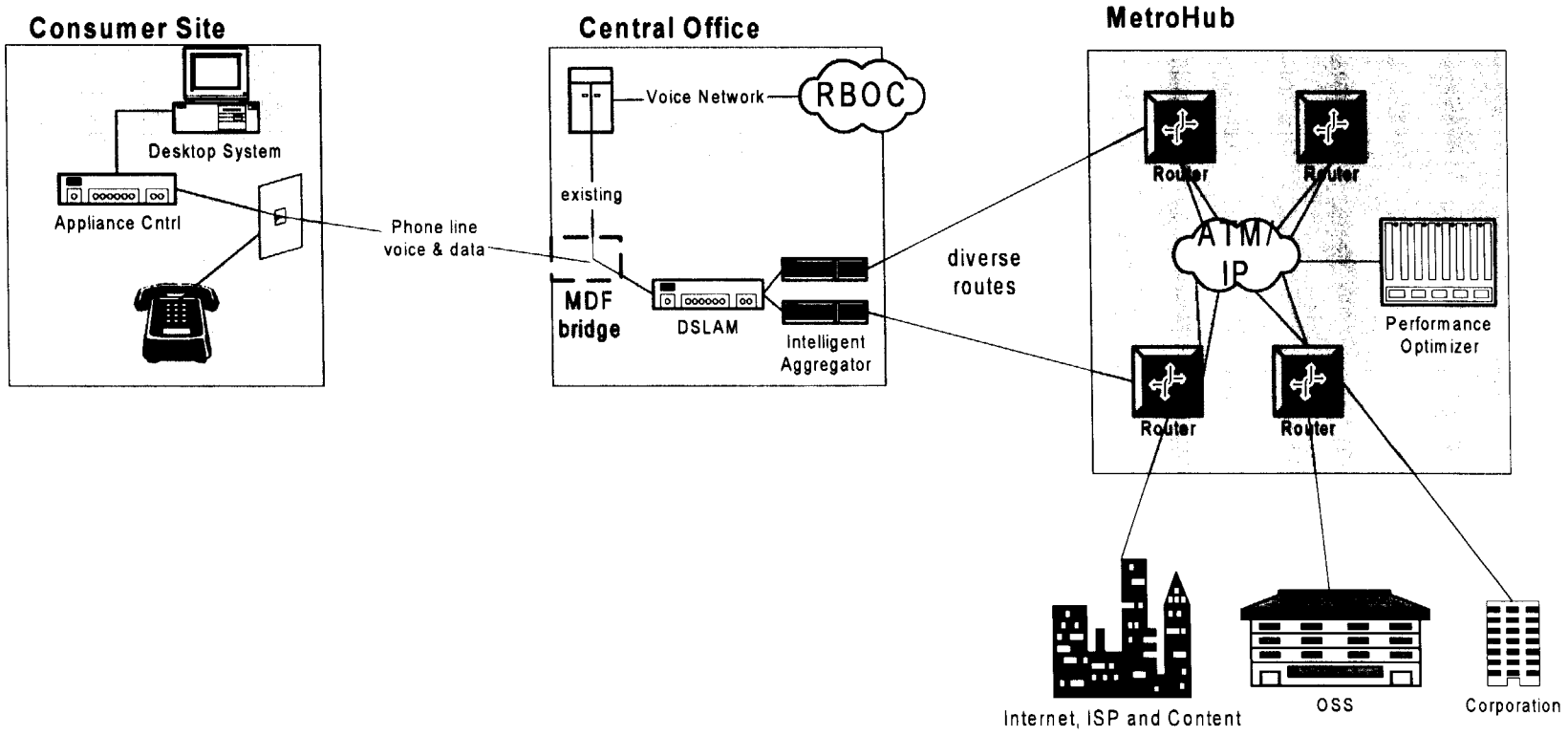
- **Customer installed high-speed Internet access**

  M1 DSL Service 1mbps @ $49.95

  – Automated line qualification of existing loop
  – Web-based sign-up, provisioning
  – Direct shipment of modem to customer
  – User installation of service and modem
  – No technical knowledge required
  – $49.95 per month including ISP access and service

MACH ONE COMMUNICATIONS

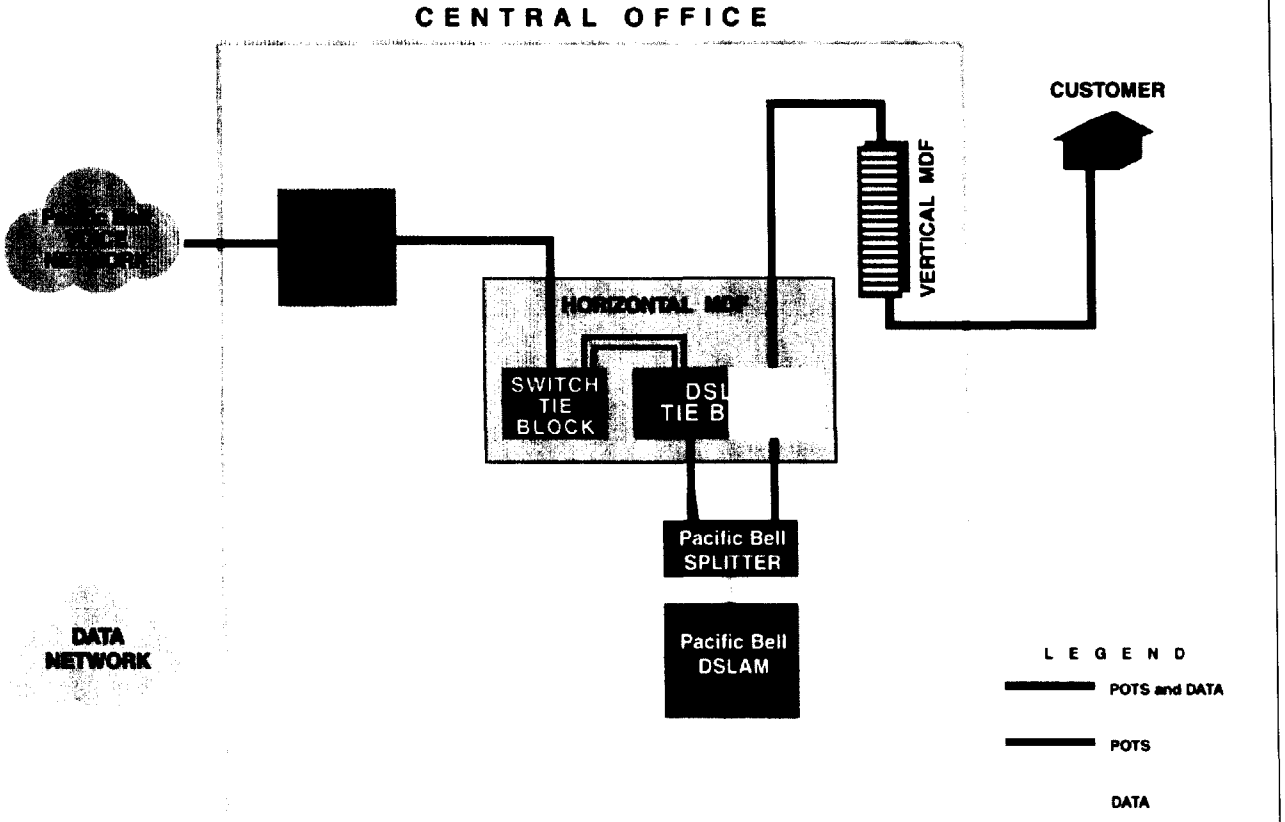
Systems Architecture



Installation Cost	Line cost	Hosting CO/Cost	Backhaul Cost	Tranist Cost
Operations Customer Support				

MACH ONE COMMUNICATIONS

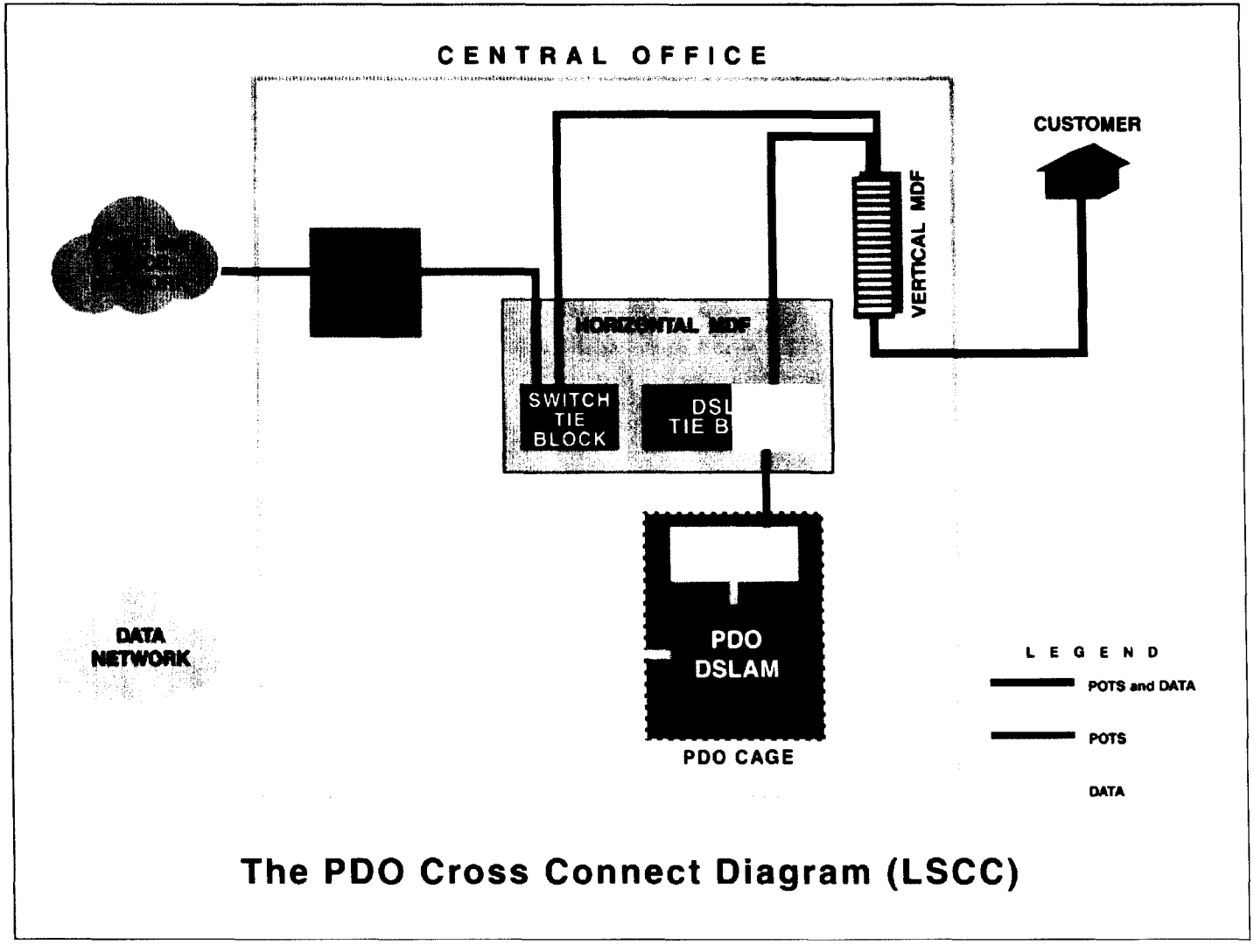
Pacific Bell Cross Connect



The Pacific Bell DSL Cross Connect Diagram

MACHONE COMMUNICATIONS

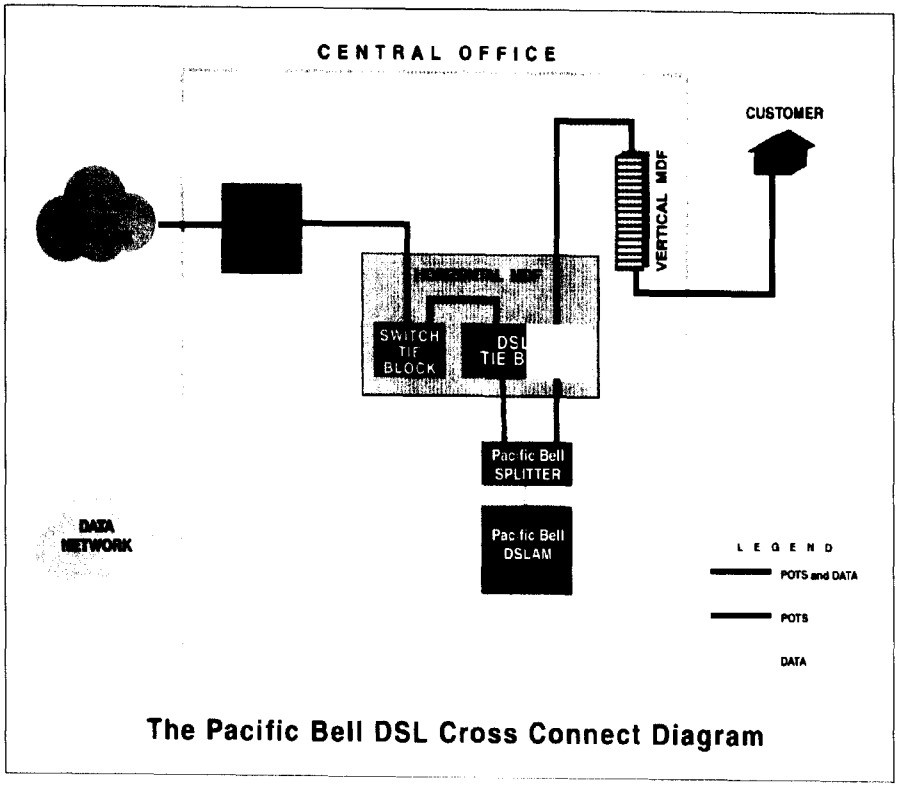
MachOne Cross Connect



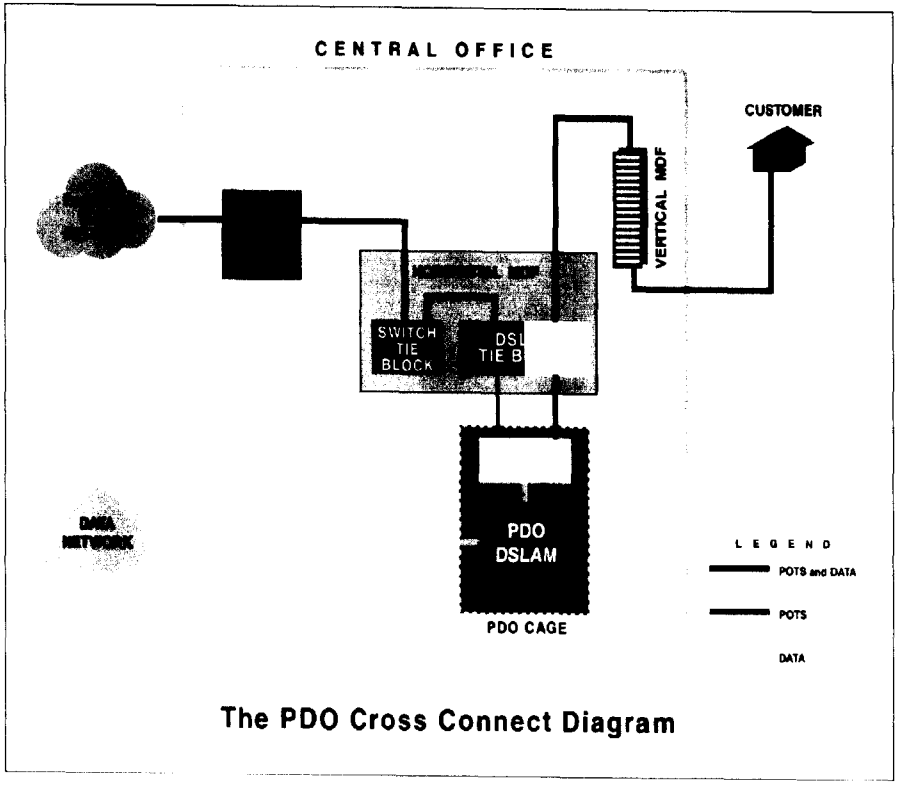
The PDO Cross Connect Diagram (LSCC)

MACH ONE COMMUNICATIONS

Cross Connects...



The Pacific Bell DSL Cross Connect Diagram



The PDO Cross Connect Diagram

MACHONE COMMUNICATIONS

Our business model

- Retail DSL Service Provider
  - Sell MachOne branded service as a CLEC
- Wholesale/OEM DSL Service Provider
  - National Brand or Private Label Service
  - Deploy through partnerships with Incumbents

MACH ONE COMMUNICATIONS

California PUC Status

Line sharing proposal rejected by Pacific Bell; Arbitration petition filed	**6/98**
Draft Arbitrators report released	**10/15/98**
Final Arbitrators report to CPUC	**11/09/98**
California PUC Action	**12/17/98**

MACH ONE COMMUNICATIONS

CLEC Voice & Data

SBC Proposed Charges (TELRIC)

UNE	Recurring	Non-recurring
Voice xConnect	$1.17	$236.38
Shielded xConnect	$0.90	$255.95
Jack Panel	$1.85	N/C
Voice Port	$3.49	$201.51
Loop	$12.95	$58.50
Total	$20.89	$752.34
Amortized Non-Recurring		$20.90

UNE Monthly Cost **$41.79**

MACH ONE COMMUNICATIONS

CLEC Line Sharing

SBC Proposed Charges (TELRIC)

UNE	Recurring	Non-recurring
Voice xConnect		
Shielded xConnect	$0.90	$255.95
Jack Panel	$1.85	N/C
Voice Port		
Loop		
Total	$2.75	$255.00
Amortized Non-Recurring		$7.08

UNE Monthly Cost **$9.83**

MACH ONE COMMUNICATIONS

Conclusion

- High speed communications to the home is a major growth initiative for the next 25 years
- Without a level playing field, the customer loses
- CLEC's should be treated the same way that RBOC's treat themselves

PSW/tcg

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition of PDO Communications, Inc. for Arbitration Pursuant to Section 252 of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Pacific Bell.	Application 98-06-052 (Filed June 15, 1998)

DRAFT ARBITRATOR'S REPORT

PDO Communications, Inc. (PDO) filed a Petition for Arbitration (Petition) on June 15, 1998 to institute an arbitration proceeding with Pacific Bell. This Petition was filed pursuant to § 252 of the telecommunications Act of 1996 and Commission Resolution ALJ-174 (ALJ-174). On July 7, 1998, Pacific Bell filed a motion to reject the petition, contending that the petition had various procedural infirmities. These infirmities were resolved and the motion was denied by ALJ Ruling on August 11, 1998. On July 10, Pacific Bell filed its response to the petition along with a motion for leave to file portions of the response under seal. This motion was granted on August 3, 1998. On July 17, PDO and Pacific Bell filed a revised statement of unresolved issues as required by Rule 3.7 of ALJ-174, which notes on an issue by issue basis where the parties have reached agreement subsequent to the filing of the Petition and where disagreement still exists. This revised statement of unresolved issues defines the universe of disputed issues for which arbitration is sought in this proceeding.

An initial arbitration meeting was held on July 31, 1998, pursuant to Rule 3.8 of ALJ-174. Although this initial arbitration meeting was held on short notice, insufficient for all but PDO and Pacific Bell to participate, no prejudice to

other potential parties occurred. The initial arbitration meeting was solely concerned with the schedule for the proceeding, the opportunity for additional discovery and the nature of the record that would be utilized to resolve this proceeding. All parties on the larger service list utilized at the initial stages of an arbitration were given adequate notice of the adopted schedule and process and the opportunity to indicate their interest in participation in the proceeding.

Senate Bill 960

In an Administrative Law Judge's Ruling following the initial arbitration meeting, it was determined that the schedule and procedural elements mandated for arbitrations pursuant to the § 252 of the Telecommunications Act of 1996 are incompatible with the schedule and other procedural requirements imposed by Senate Bill (SB) 960 (Ch. 856, Stats. 1996). The requirements of the Telecommunications Act of 1996 require much faster processing of petitions for arbitrations and shorter intervals between steps than does SB 960, but retains comparable opportunities for Commissioner involvement. For these reasons, while the purposes behind SB 960 are fully supported, arbitrations will necessarily be conducted under the requirements of the Telecommunications Act of 1996 and ALJ-174, rather than under the requirements established to implement SB 960.

Schedule and Conduct of the Arbitration

Pursuant to the Telecommunications Act of 1996, § 252(b)(1), petitions for arbitrations must be filed between day 135 and day 160 after the initiation of negotiations between the parties. Once the arbitration petition is filed with the state commission, all issues are required to be resolved by the end of the 9th

month following the initiation of negotiations. Pursuant to the discussion in Resolution ALJ-168[1], the resolution of all issues is deemed to have occurred when the parties file an agreement with the Commission that conforms with the resolutions contained in the Final Arbitrator's Report. (Res. ALJ-168, § 3.11, at pp. 7-8.) In this proceeding the petition indicates that negotiations commenced on January 6, 1998, the petition was filed on the 160th day following the start of negotiations, which would have required all matters to be resolved by October 6, 1998.

A schedule that would accommodate this resolution date was discussed by the arbitrator with the parties at the initial arbitration meeting on July 31, 1998. At the parties' suggestion, a schedule was developed and discussed that would allow the resolution of all issues to exceed the nine-month requirement. The arbitrator made clear to the parties that such a variation from this requirement could only be considered if this Commission obtained explicit written waivers of this requirement and acceptance of the resulting revised schedule. The advantages of such a schedule extension would be to permit an opportunity for desired discovery by the parties, supplemental testimony addressing certain matters, a less severe briefing schedule and certain other benefits.

The arbitrator determined that such a waiver should be permissible under the Telecommunications Act of 1996. The language setting forth the nine-month conclusion requirement is as follows:

> "The State Commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the

[1] ALJ-168 was the initial Commission resolution establishing arbitration rules pursuant to Section 252 of the Telecommunications Act of 1996. ALJ-174 is the current version, but definitions in the earlier version are still generally applicable.

> parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section." (§ 252(b)(4)(C).)

In the event that this Commission "fails to act to carry out its responsibility under this section in any proceeding or other matter under this section" then the potential effect is for the Federal Communications Commission "to issue an order preempting the State commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice of such failure)...." (§252(e)(4).)

The intent of this provision is to protect the parties, particularly the petitioner, from the risk of a state commission failing to act in a timely fashion. In this arbitration, there is no question that the California Public Utilities Commission could and would resolve this matter within the imposed time limits. However, if the party for whom the protection is established wishes to knowingly, voluntarily and explicitly waive that protection for a reasonable purpose, such a waiver seems clearly permissible.

Subsequent to the initial arbitration meeting, the arbitrator was informed that both PDO and Pacific Bell would prefer the expanded schedule. On August 14, 1998, both parties provided explicit written waivers of the nine-month time resolution requirement, noting their acceptance of the scheduled conclusion date and that such acceptance was with full knowledge of the time limit established in § 252 and was entered into voluntarily and at their own request.

During the initial arbitration meeting the parties also indicated that they might be willing to proceed without the need for hearings, i.e., this proceeding would be resolved based on written submissions. Testimony (and other exhibits) would be received in written form subject to written objections. Three days were reserved for hearings if they proved necessary. Subsequently the arbitrator was

informed that the parties wanted to proceed without hearings but wished to have an oral argument before the arbitrator after the submission of briefs for the purpose of addressing any questions that might remain. This proposal was accepted by the arbitrator with a schedule set for discovery, the distribution of supplemental testimony by both PDO and Pacific Bell, single concurrent briefs and oral argument. The oral argument was held on October 9, 1998 before both the arbitrator and Commissioner Henry Duque, the Assigned Commissioner.

Dates for the conclusion of the proceeding were also set which, although they exceeded the nine-month requirement of the Telecommunications Act of 1996, maintained the milestone intervals required by ALJ-174 following the submission of briefs. In this fashion, the additional time beyond what would have otherwise been required to meet statutory deadlines, was solely that taken by the various activities of the parties - discovery, supplemental testimony preparation and briefs.

Issues Presented for Arbitration

In the Revised Statement of Unresolved issues filed on July 17, 1998, PDO and Pacific Bell provided a matrix of the various issues and sub-issues presented for resolution and their respective positions, along with noting that some of the issues presented in the petition for arbitration and the response had been resolved.

In many respects this arbitration concerns one primary issue around which others revolve. That issue is whether Pacific Bell as the incumbent local exchange carrier (ILEC) can be compelled to make available as an unbundled network element a portion of the capacity of a local loop which Pacific Bell is currently using to provide voice communications or other services to its own end user/customer. PDO requests Pacific Bell to make available this portion of the existing local loop to allow PDO, by various connection methods, to provide a

high-speed data service known as DSL or digital subscriber line, used for internet connection or other high-capacity data exchange purposes. In one interconnection method proposed, filter/splitter cross connect, data and voice service would be able to be provided simultaneously. In the other interconnection method proposed, line sharing cross connect, there would be a "temporal division" of the usage of the local loop with the data and voice service provided at separate times.[2]

Pacific Bell is willing to provide PDO with its own loops to end users as unbundled network elements, but objects to having to share the loops it currently uses to provide service. It is also willing to provision the separate loops it would make available to PDO to accomplish the technical configurations necessary for PDO to provide DSL or other services to its own end users.

Beyond the question of whether Pacific Bell must, as an incumbent local exchange carrier, share capacity on existing local loops are an array of technical questions regarding the manner in which such sharing of a local loop would be accomplished. These include such questions as the specific hardware

---

[2] PDO's description of the proposed service is described somewhat differently in various portions of its pleadings and exhibits. In its Petition which initiated this proceeding, Exhibit B "Declaration of Grundy," the line sharing cross-connect is described as "temporal sharing" as noted above, with data flow interrupted when voice grade transmission occurs. (Grundy at 2.) The filter/splitter cross connect is described as providing either temporal sharing or "allows the voice loop to carry both signals simultaneously .... Configuration ii is the same configuration that Pacific Bell is utilizing to provide its new line sharing DSL service over existing customer voice lines..." (Id.) However, in supplemental testimony, PDO's witness states that in both configurations the service will be temporal sharing in nature, i.e., voice and data flow will not occur simultaneously. (Direct Testimony of James G. Randolph at 6, Q-10 and Q-11, and at 7-8, Q-14, and Q-15.) Randolph states that such temporal sharing is what distinguishes the service from that offered by Pacific Bell. (Id. at 5, Q-8.) For the purpose of this decision, this potential ambiguity in the explicit arrangements does not affect the outcome.

configurations that would be required to allow both Pacific Bell and PDO to establish and maintain their individual end user services, means to avoid interference of one service with the other, pricing issues related to both the purchase of a portion of a local loop capacity and the related hardware configurations, and contract/regulatory issues concerning the relationship of the end user to Pacific Bell and PDO and Pacific Bell and PDO to each other in the event of an end user/customer default or dispute regarding the service of only one of the two providers sharing the loop.

Assuming one were to acknowledge the appropriateness of the physical connection arrangement, the pricing and regulatory/contract issues remain controversial. First PDO contends that the price PDO would pay Pacific Bell for the loop, defined as the total estimated long-run incremental cost or TELRIC of the loop, is zero. This is premised on PDO's contention that since Pacific Bell is already providing voice grade service on the same loop, the incremental cost of allowing PDO to provide data service on the loop is zero. PDO does not propose to share the cost of the loop. Second, questions arise as to what happens to service on the loop if the end user/customer defaults in some fashion with respect to only one of the two carriers providing that customer service on the shared loop, e.g., failing to pay properly incurred charges to Pacific Bell while paying PDO. What obligations would exist? PDO proposes that under such a circumstance Pacific Bell remain obligated to maintain service on the line for PDO even if Pacific Bell received no revenue.

Issue 1: Is PDO entitled to line-sharing cross-connect in order to connect its equipment or that of a third party to an existing loop over which Pacific Bell is providing voice services in order to provide data telecommunications services to the customer?

Line-sharing cross-connect is a procedure in which the collocated equipment arrangement allows for "temporal sharing" of a line. Using PDO's DSL arrangement, data is able to flow on a copper pair any time the line is not in use for voice grade communications. When the voice customer either picks up the telephone (for voice calling, use of a modem, facsimile transmission, etc.) or receives a ring indicating an inbound communication, the data stream ceases until the voice communication is placed "on hook" again. In essence PDO proposes to connect to the copper pair constituting the local loop Pacific Bell is already using to provide voice service to an existing Pacific Bell end user customer. Pacific Bell contends that the owner of the local loop is entitled to exclusive use of the loop and cannot be compelled to share it in any fashion. PDO challenges this assertion and contends that the regulations of the Federal Communications Commission (FCC) which Pacific Bell cites refer only to the rights of a competitive local carrier (CLC) to have the exclusive use of a purchased local loop and do not grant rights of exclusive use to the incumbent local exchange carrier.

Pacific Bell prevails on this issue and is entitled to exclusive use of the local loops it is utilizing to provide service to its own end users/customers. PDO is entitled to purchase its own local loops from Pacific Bell for its own exclusive use in providing DSL or other telecommunications services which PDO is authorized to provide. Pacific Bell has agreed that if an existing Pacific Bell voice customer becomes a PDO customer, and moves its voice service as well, the customer would be able to retain its existing telephone number with no number portability requirement.

The basis for this conclusion is both the existing regulations of the FCC implementing the Telecommunications Act of 1996 and a recently published FCC Notice of Proposed Rulemaking (NPRM).

In the FCC's First Report and Order implementing the local competition provisions of the Telecommunications Act of 1996, the FCC adopted a regulation specifically on point. Section 51.309 (codified as 47 CFR 51.309) governs the use of unbundled network elements. That section states in relevant part:

> "(c) A telecommunications carrier purchasing access to an unbundled network facility is entitled to exclusive use of that facility for a period of time, or when purchasing access to a feature function, or capability of a facility, a telecommunications carrier is entitled to use of that feature, function or capability for a period of time. A telecommunications carrier's purchase of access to an unbundled network element does not relieve the incumbent LEC of the duty to maintain, repair, or replace the unbundled network element."[3]

There is no dispute that a local loop is itself an unbundled network element. (47 CFR 51.319(a).)

The rationale given by the FCC in its discussion in the First Report and Order concerning the reasons for giving a carrier exclusive use of a local loop provides a great deal of light on the subject. The FCC stated the following:

> "We decline to define a loop element in functional terms, rather than in terms of the facility itself. Some parties advocate defining a loop element as merely a functional piece of a shared facility, similar to capacity purchased on a shared

---

[3] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket Nos. 96-98 and 95-185, FCC 96-325 (Released August 8, 1996) (hereafter the First Report and Order), Appendix B "Final Rules" at B-17.

> transport trunk. According to these parties, this definition would enable an IXC [interexchange carrier] to purchase a loop element solely for purposes of providing interexchange service. While such a definition, based on the types of traffic provided over a facility, may allow for the separation of costs for a facility dedicated to one end user, we conclude that such treatment is inappropriate. Giving competing providers exclusive control over network facilities dedicated to particular end users provides such carriers the maximum flexibility to offer new services to such end users. In contrast, a definition of a loop element that allows simultaneous access to the loop facility would preclude the provision of certain services in favor of others. For example, carriers wishing to provide solely voice-grade service over a loop would preclude another carrier's provision of a digital service, such as ISDN or ADSL, over that same loop. We note that these two types of services could be provided by different carriers over, for example, separate two wire loop elements to the same end user."[4]

Pacific Bell has relied upon this commentary in support of its position. PDO provided an interpretation of this FCC discussion that contended that it related solely to the exclusive rights of a competitive local carrier to a local loop but that such exclusivity did not apply to the loops utilized by an incumbent local exchange carrier. At the oral argument PDO went further and seemingly contended that the sole reason the FCC made its cautionary statement about loop sharing was a then erroneous assumption that from a technical standpoint a loop could not be shared by multiple service providers since voice and data services would interfere with each other.

PDO's interpretation seems highly strained. The primary point of the FCC's concern appears to be the whole array of constraints that might exist on

[4] First Report and Order, ¶ 385, page 186.

one carrier from sharing a loop with another. The policy reasons noted by the FCC for maintaining exclusive use – the ability of a carrier to offer an array of services without constraint by a sharing carrier and the potential incompatibility of various voice and data services – appear as applicable to the loops operated by the incumbent local exchange carrier as those leased by a competitive local carrier.

Any potential opportunity for PDO's interpretation was lost, however, when the FCC issued its NPRM on advanced technologies on August 6, 1998. The FCC called for comment on "whether two different service providers should be allowed to offer services over the same loop," exactly the proposal of PDO. The clear import of the NPRM is that different service providers are **not** currently permitted to offer services over the same loop. The entire question, as framed by the FCC is as follows:

> "We also seek comment on whether two different service providers should be allowed to offer services over the same loop, with each provider utilizing different frequencies to transport voice or data over that loop. xDSL technology, for example, separates a single loop into a POTS channel and a data channel, and can carry both POTS and data traffic over the loop simultaneously. A competitive LEC may want to provide only high speed data service, without voice service, over an unbundled loop. Should the competitive LEC have the right to put a high frequency signal on the same loop as the incumbent LEC's voice signal? If a competitive LEC takes an entire loop, could the competitive LEC sell the voice channel back to the incumbent LEC or to another carrier? Should the competitive LEC be allowed to lease the loop for data services and resell the voice service of the incumbent LEC? Commenters should address with particularity the advantages and disadvantages of these various possibilities, and what practical considerations would arise in each situation. For example, which entity would manage the frequency division multiplexing equipment if two carriers are offering services over the same loop? We tentatively conclude

> that any voice product that the incumbent LEC provides to its advanced services affiliate would have to be made available to competitive LECs on the same terms and conditions. For example if the advanced services affiliate leases the loop and resells the incumbent's voice service, the competitive LEC must be allowed to do likewise."[5]

The comment period on this NPRM called for opening comments on September 21, 1998 and reply comments on October 13, 1998. A decision is not anticipated for several months. Thus, as of this time, it seems clear that telecommunications carriers, whether competitive local carriers or an incumbent local exchange carrier, should not be authorized to share a local loop. They certainly cannot be compelled to share a local loop. In the event the FCC determines that loop sharing should be permitted, this issue may be revisited either by modification to the interconnect agreement reached as a result of this proceeding or as a result of generic authorization guidelines that may be adopted by the FCC or this Commission consistent with the FCC's determination.

PDO's response to the statement in this NPRM is to contend that this is merely an effort by the FCC to clarify the First Report and Order, which according to PDO didn't prohibit what PDO proposes. It is difficult to see how an FCC question asking whether what PDO proposes "should be allowed," coupled with a prior unambiguous statement of the policy reasons why it shouldn't be allowed, should now be interpreted, according to PDO as: "And so, as far as we're concerned, the FCC is acting to clarify its first report and order,

---

[5] In the Matters of Deployment of Wireline Services Offering Advances Telecommunications Capability, et al., CC Docket No. 98-147, et al., Memorandum Opinion and Order, and Notice of Proposed Rulemaking, FCC 98-188 (Released August 7, 1998) (hereafter NPRM), ¶ 162, page 73.

which we think did not prohibit what we're asking for here." (Oral Argument Tr. 13:14-16.)

Issue 2: Is PDO entitled to Filter Splitter Cross-Connect in order to connect its equipment or that of a third party to an existing loop over which Pacific Bell is providing voice services in order to provide data telecommunications services to the customer?

Filter/Splitter Cross-Connect is a procedure in which the collocated equipment arrangement allows for "spectrum sharing" of a line. That is the voice grade communication (voice, standard modem, facsimile, etc.) and the DSL data stream occupy different portions of the band width available on the copper pair comprising the loop. (See earlier footnote regarding potential ambiguity in this description.)

Consistent with the discussion of Issue 1, Pacific Bell prevails on this matter and will not be required to share with PDO local loops on which Pacific Bell provides existing service to customers. Pacific Bell is required to lease local loops to PDO for its exclusive use. Although the technology is somewhat different, the legal and regulatory relationships of PDO and Pacific Bell would be essentially identical.

Issue 3: Is PDO entitled to use the line-sharing cross-connect or filter splitter cross-connect in order to connect its equipment to existing loops over which another competitive local carrier (with whom PDO has an agreement) is providing voice services, so that PDO can provide the same customers data telecommunications services?

Consistent with the discussion of Issue 1, Pacific Bell prevails on this matter and PDO will not be authorized to compel its access to local loops which Pacific Bell leases to another competitive local carrier. Depending on the resolution of the NPRM cited earlier, this authority may be available in the future for voluntary arrangements. For this reason, PDO is encouraged to pursue the

potential for such voluntary arrangements. Pacific Bell is required to lease local loops to PDO for its exclusive use.

Issue 4: Should PDO only be held to a "material" standard for degrading or interrupting services? Should Pacific Bell be held to the same loop non-interference standard as PDO?

Consistent with the discussion and resolution of Issues 1, 2, and 3, there is no need to resolve this issue since its outcome is only relevant if PDO were to prevail on its request for sharing of the local loop.

Issue 5: What information or testing is Pacific Bell required to perform to enable PDO to determine if a the loop connecting to a particular customer is capable of xDSL?

Consistent with the discussion and resolution of Issues 1, 2, and 3, Pacific Bell is under no obligation to test regarding the capability of spectrum unbundling. However, Pacific Bell is obligated to ensure that loops purchased by PDO are conditioned to be DSL capable.

Issue 6 and Issue 7: PDO and Pacific Bell are in agreement

Issue 8: Does PDO's proposal constitute a request for interconnection under the Telecommunications Act of 1996?

Since this decision requires that PDO utilize a separate loop for its service, there is no need to address and resolve this issue.

Issue 9: Are the cross-connects requested (line-sharing cross-connect and filter splitter cross-connect) technically feasible? Are the cross-connects requested used by Pacific Bell in other telecommunications services?

The record indicates that the cross-connects proposed by PDO may well prove to be technically feasible and may, in proper circumstances, present a valuable tool to provide multiple telecommunications services on a single loop. While Pacific Bell's caution in evaluating new technologies that might be

connected to its system is understandable, it appears that both the cross-connect approaches may prove useful. However, since this decision requires that PDO utilize a separate loop for its service, there is no need to comprehensively address and conclusively resolve this issue. At this time the more appropriate context in which PDO should pursue its approaches are either on its own or in a voluntary joint undertaking with another carrier offering its voice/data compatible technology to customers as a package. I will not at this time, given the regulatory status of loop sharing at the FCC, mandate a carrier – ILEC or CLC – share its loop with another carrier.

Issue 10: Are the requested unbundled network elements, specifically shared access of local loops, necessary in order to provide the contemplated services? Will such services be impaired without access to the unbundled network elements?

Consistent with the discussion of Issue 1, Pacific Bell prevails on this matter. The sharing of local loops with PDO on which Pacific Bell provides existing service to customers is not required for the service PDO proposes. While the service PDO proposes might prove less expensive, both to provide and in retail costs to prospective PDO customers, the opportunity to offer such services will not be impaired. It is clear that other carriers already offer services similar to that which PDO proposes to provide and do so by the purchase of their own loops from Pacific Bell. Such other agreements may be a useful guide for PDO and Pacific Bell. It is also clear that PDO may have some success in finding carriers that are willing to voluntarily enter into arrangements with PDO in order to offer customers the proposed voice/data shared-loop package. PDO has apprised this Commission of its joint test with Citizens Communications and alleged its success.

Issues 11, 12, 13, 14, and 15: What prices should PDO pay Pacific Bell for the facilities which Pacific Bell is required to make available to PDO?

Based on the resolution of Issues 1, 2, and 3, there is no need to resolve this matter with respect to the prices to be paid for the loop sharing arrangements PDO proposes. The parties are directed to negotiate appropriate prices for the availability to PDO of appropriately provisioned local loops for the exclusive use of PDO.

Issue 16: Selection of definitions

Pacific Bell's definitions are consistent with the purchase rather than the sharing of a loop; therefore, its definitions will be adopted.

Item 17: Definitions for filter/splitter cross-connect and line-sharing cross-connect?

Based on the resolution of Issues 1, 2, and 3, there is no need to resolve this issue since PDO's proposed service arrangement is not authorized.

Issue 18: PDO and Pacific Bell are in agreement.

Issue 19: With respect to the definition of "Voice Link," is it equivalent to "Basic Link" or an "Assured Link"?

Pacific Bell prevails on this item. Voice Link allows a carrier to provision DSL over the data only spectrum portion of the loop while "Assured Link" and "Basic Link" do not make a distinction between voice and data.

Issues 20, 21: PDO and Pacific Bell are in agreement.

Issue 22: Who should be responsible for providing intercompany forecasting?

Pacific Bell and PDO should undertake joint forecasting of necessary loops. This will provide an incentive for both to be accurate in their estimates. This is consistent with the outcomes in prior arbitrations. While forecasting responsibilities have been placed on one of the parties in some voluntary

agreements, that is the product of the totality of the terms and conditions to which the parties agreed.

Issues 23, 24: PDO and Pacific Bell are in agreement.

Issue 25: Availability of alternative arrangements in the case of integrated digital loop carriers (IDLC).

PDO prevails on this issue. Pursuant to the First Report and Order, Pacific Bell is obligated to provide the necessary conditioning of existing loops to enable requesting carriers to provide services not currently provided over such facilities, including DSL. (First Report and Order, ¶¶ 382-384.) While the First Report and Order speaks in terms of "requesting carriers" it would seem that the request for interconnection initially made by PDO and culminating in this arbitration would constitute a request and that no further "bona fide" request, as suggested by Pacific Bell would be required. PDO represented at oral argument that Pacific Bell has indicated its willingness to make such conditioning available. (Tr. 8:26-9:8.) Pacific Bell did not contest that representation. Thus, this may be an issue on which the disagreement is more one of form than substance.

Issue 26: Must Pacific Bell maintain PDO service to end user in the event voice service provided by Pacific Bell is terminated due to nonpayment by the Pacific Bell customer for voice services or any other reason set out in Pacific Bell's tariffs?

Based on the resolution of Issues 1, 2, and 3, there is no need to address this issue since Pacific Bell will not be required to share with PDO local loops on which Pacific Bell provides existing service to customers. Therefore, PDO will have exclusive use of loops it purchases and will not suffer any harm if the same customer has service provided by Pacific Bell on its own loops discontinued.

However, some comments are appropriate. This issue highlights one of the many problematic concerns associated with the sharing of a local loop by multiple telecommunications carriers. It would seem reasonable that if the

underlying voice service is terminated for a nonpayment of service fees or other valid reason authorized by Pacific Bell's approved tariffs, Pacific Bell should not be obligated to maintain the loop for other than emergency 911 service, as required by § 2883 of the Public Utilities Code and D.95-12-056 (63 CPUC 2d 700 at 727, 751, Ord. Par. 29-32.) An alternative arrangement could be that PDO, if desirous of maintaining the loop, would become responsible for the payment of the loop cost in place of the customer.

Issues 27, 28, and 29: PDO and Pacific are in agreement.

Issue 30: Resolution of issues concerning reciprocal compensation, internet traffic compensation and passing of calling party number.

This matter is currently pending before the Commission in the local competition docket (R.95-04-043/I.95-04-044) and is on the Commission meeting agenda awaiting a decision. As is noted generically at the conclusion of this Arbitrator's Report, when the Commission issues a decision on this matter, the parties will be required to ensure that their agreement complies with the resolution adopted.

In the interim the agreement should eliminate paragraphs "O" and "P" of Pacific's Version of Section IX (Reciprocal Compensation Arrangements). For paragraph "O," this will maintain the status quo and be in keeping with prior agreements arbitrated and reviewed by the Commission. It will not prejudge the matter pending on the Commission's agenda. For paragraph "P" there has been no compelling reason shown for this addition.

Issue 31: Should PDO get discounted rates for collocation which it claims Pacific Bell provides to other competitive local carriers?

Pacific Bell prevails on this item and no discount from the 175-T tariff will be ordered for collocation. Discounted rates which Pacific Bell has provided to others are the product of voluntary agreements and reflect the package of terms

and conditions adopted by those party to the voluntary agreement. Under the provisions of the Telecommunications Act of 1996 and subsequent judicial decisions interpreting it, PDO can agree to accept the entirety of one of those agreements as its own agreement with Pacific Bell. However, I will not order Pacific Bell to provide a discounted rate for collocation in the context of an arbitration.

Issues 32, 33, and 34: PDO and Pacific Bell are in agreement.

Issue 35: Should the term of the agreement be two years or three years?

For stability purposes, the term of the agreement should be three years because a shorter contract period would tend to require renegotiation to occur too soon to allow parties to benefit from the knowledge gained in the marketplace. The agreement will remain in effect until the completion of any arbitration process, the request for which was filed prior to the end of the initial three-year period. The parties should ensure the contract has provision for reopening on either a mandatory basis if the FCC or this Commission changes the requirements for various terms and conditions as a result of the outcomes of industry wide generic proceedings or on a party option basis if regulatory constraints that led to specific outcomes are modified. For example, if the FCC and/or this Commission were to determine that multi-carrier sharing of a loop can be compelled, the opportunity should exist for PDO to request a reconsideration of this issue.

Issue: Form of agreement.

The form of agreement does not appear as a disputed item and, based on the matrix of issues, the parties appear to have utilized the Pacific Bell form of agreement as their base for contract discussions. This is appropriate and

consistent with prior arbitration decisions. Therefore, Pacific Bell form of agreement shall be utilized by the parties to prepare their agreement.

Issue: Modifications based on future Commission decisions.

All terms of the arbitrated agreement will be subject to modification based on future Commission decisions.

ORDER

1. The parties' agreement shall be concluded in keeping with the preceding resolutions of the issues presented for arbitration.

2. Parties may file and serve comments on the Draft Arbitrator's Report as provided by the Commission's rules of Practice and Procedure, and revised Rules Governing Filing Made Pursuant to the Telecommunications Act of 1996 (Resolution ALJ-174). Comments shall be filed and served within 10 days of the Draft Arbitrator's Report.

3. Within 7 days of the filing and service of the Final Arbitrator's report, the parties shall file the entire agreement for approval. The filing shall also include a statement by each party (1) identifying the tests used in the Telecommunications Act of 1996 and Resolution ALJ-174, for Commission consideration of the arbitrated agreement, and (2) showing that the arbitrated agreement meets or does not meet the tests in the Telecommunications Act of 1996, and should be approved or rejected by the Commission.

Dated October 15, 1998, at San Francisco, California.

Philip Scott Weismehl
Arbitrator

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Draft Arbitrator's Report on all parties of record in this proceeding or their attorneys of record.

Dated October 15, 1998, at San Francisco, California.

Teresita C. Gallardo

Teresita C. Gallardo

NOTICE

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.